INDEX OF AUTHORITIES

	PAGE
Dampskibsselskabet Atalanta A/S Et Al vs. United States, C.C.A. 5, 31 F. 2d 961 (1929)---------	2, 3, 4
Guy v. Donald, U.S. Sup. Ct., 203 U.S. 399, Sup. Ct. 63, 51 L. Ed. 245 (1906)----------	2, 3, 4
Kuhn vs. S/S Seatrain Georgia, 1963 A.M.C. 1226, U.S.D.C., S.D., N.Y. (1963)----------	3
Liv General vs. Pilots Association for the Bay and River Delaware, and Henry V. Rice and all other members for the Bay and River Delaware, U.S.D.C., Del., 254 F. Supp 447 (1966)----------	3
The City of Reading and the City of Dundee, C.C.A. 3, 103 Fed. 696, 108 Fed. 679 (1901)-------	3
The Griffdu, U.S.D.C., S.D. Texas, 25 F. 2d 312, (1928)----	3
The Manchioneal, C.C.A. 2, 243 Fed. 801 (1917)----------	3
United Fruit Company vs. Mobile Towing & Wrecking Company; Mobile Harbor Pilots Association, an unincoporated association; Mobile Harbor Pilots Association, a corporation, and Percy Manders, Jr., U.S.D.C., S.D., Ala. 177 F.S. 297 (1969)-	4

INDEX OF AUTHORITIES

PAGE

IN THE
SUPREME COURT OF THE
UNITED STATES

NO. 71-1650

C & G BOAT COMPANY, INC., ET AL.,

Petitioners

VS.

CRESCENT RIVER PORT PILOTS ASSOCIATION, ET AL.,

Respondents

On Petition for Writ of Certiorari to the United States Court of Appeal for the Fifth Circuit

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RESPONDENTS' BRIEF
IN OPPOSITION

TO: The Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States

* * * * * *

Respondents, Crescent River Port Pilots Association, Et Al, respond herewith to the petition for a Writ of Certiorari, to be issued from this Honorable Court to the United States Court of Appeal for the Fifth Circuit, seeking review of the affirmance summarily and per curiam of a

summary judgment of dismissal by the District Court of Respondents from this lawsuit. Respondents pray that the request for Writ of Certiorari be denied.

ARGUMENT

Petitioners' question of the existence of a doctrine of immunity of ship pilots from vicarious tort liability was unequivocally answered in the affirmative by this Honorable Court in Guy v. Donald.[1]

The Fifth Circuit, in Dampskibsselskabet Atalanta A/S Et Al vs. United States,[2] a case on all fours with the instant litigation, applied Guy v. Donald, immunizing Louisiana pilots from vicarious tort liability, and stated its principle as follows:

> "The fundamental principle underlying the exemption of pilots associations from liability for negligence of their members in performing their duties as pilots, is that the association exercises no control over the manner in which those duties are to be performed, and, therefore, a pilot cannot be said to be an agent of the association in that respect."

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1. Guy v. Donald, U.S. Sup. Ct., 203 U.S. 399, 27 Sup. Ct. 63, 51 L. Ed. 245 (1906)

2. Dampskibsselskabet Atalanta A/S Et Al vs. United States, C.C.A. 5, 31 F. 2d 961 (1929)

In the Atalanta decision, the Fifth Circuit denominated the entire partnership - vicarious liability argument raised herein as "immaterial" when it said:

> ". . . For the purposes of this case, it is immaterial whether a pilots' association be considered a partnership or not."

The very same arguments which these petitioners raise, relative to the applicability of Louisiana Law of Partnership to the pilots association, were made to the Fifth Circuit in Atalanta, and rejected in denying claims of vicarious liability by the defendant pilot association.

Among the circuits, there is no conflict as to the applicability of the immunity principle of Guy v. Donald, to voluntary ship pilot associations and their members. The issue of that immunity has been raised in the Second, Third and Fifth Circuits, and in certain districts. It has been uniformly maintained from 1901 to date.[3] In no case has the immunity been

3. The City of Reading and the City of Dundee, C.C.A. 3, 103 Fed. 696, 108 Fed. 679 (1901); Guy v. Donald, U.S. Sup. Ct., 203 U.S. 399, 27 Sup. Ct. 63, 51 L. Ed. 245 (1906); The Manchioneal, C.C.A. 2, 243 Fed. 801 (1917); The Griffdu, U.S.D.C., S.D., Texas, 25 F. 2d 312 (1928); Dampskibsselskabet Atalanta A/S Et Al vs. United States, C.C.A. 5, 31 F. 2d 961 (1929); Kuhn vs. S/S Seatrain Georgia, 1963 A.M.C. 1226, U.S. D.C., S.D., N.Y. (1963); Liv General vs. Pilots Association for the Bay and River Delaware, and Henry V. Rice, and all other members for the Bay and River Delaware, U.S.

(Footnote continued on next page)

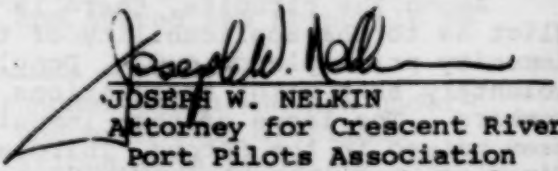
questioned even in a dissenting opinion.

Whether it be the Virginia pilots of Guy v. Donald, the Louisiana pilots of Dampskibsselskabet Atalanta A/S Et Al vs. United States, or the Crescent River Port Pilots of Louisiana herein, the immunity from vicarious tort liability is equally and uniformly applicable on the Guy v. Donald principle.

CONCLUSION

For the foregoing reasons, the petition for certiorari should be denied.

Respectfully submitted,



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Footnote No. 3 (Continued)

D.C., Del., 254 F. Supp. 447 (1966); United Fruit Company vs. Mobile Towing & Wrecking Company; Mobile Harbor Pilots Association, an unincorporated association; Mobile Harbor Pilots Association, a corporation, and Percy Manders, Jr., U.S.D.C., S.D., Ala., 177 F.S. 297 (1969).

CERTIFICATE

I, the undersigned member of the Bar of this Court, do hereby certify that I have served two copies of the foregoing brief in opposition to certiorari upon George B. Matthews, 1800 National Bank of Commerce Bldg., New Orleans, La. 70112; Samuel C. Gainsburgh, 1718 National Bank of Commerce Bldg., New Orleans, La. 70112; H. Barton Williams, 1700 Hibernia Bank Bldg., New Orleans, La., 70112; and Maurice L. Burk, 348 Baronne Street, New Orleans, La. 70112, attorneys for all petitioners, and interested parties in this application for certiorari, by mailing the same to them, postage prepaid, at their addresses above stated, this 17TH day of July, 1972.

JOSEPH W. NELKIN